

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA**

<b>STATE OF OKLAHOMA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>No. 05-CV-329-GKF(SAJ)</b>
	)	
<b>TYSON FOODS, INC., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**STATE OF OKLAHOMA'S MOTION TO STRIKE "WILLOW BROOK FOODS, INC.'S  
TRIAL BRIEF FOR HEARING ON PRELIMINARY INJUNCTION" [DKT #1579]**

Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State"), respectfully requests that this Court issue an order striking "Willow Brook Foods, Inc.'s Trial Brief for Hearing on Preliminary Injunction" [DKT #1579]. In support of its Motion, the State states as follows:

1. This Court entered an Order on February 6, 2008, stating: "Defendants' request to extend deadline to respond to motion for preliminary injunction is granted until February 12, 2008." *See* DKT #1511.
2. On February 12, 2008, Defendants collectively (including Defendant Willow Brook) filed a response to the Motion for Preliminary Injunction. *See* DKT #1531 / #1537. That same day, Defendants Peterson Cargill, and George's each also filed individual responses to the Motion for Preliminary Injunction. *See* DKT #1530, #1532 & #1533. Defendant Willow Brook made no such individual filing on February 12, 2008.

3. The State worked exhaustively to reply to these four response briefs within the three-day deadline set by the Court. *See* DKT #1511.

4. On February 19, 2008 -- the day the preliminary injunction hearing began -- Defendant Willow Brook filed "Willow Brook Foods, Inc.'s Trial Brief for Hearing on Preliminary Injunction." *See* DKT #1579. A review of this purported trial brief quickly reveals that it is in reality an individualized response to the State's Motion for Preliminary Injunction, and not a trial brief.<sup>1</sup>

5. Thus, not only did Defendant Willow Brook not seek leave to file an individualized response to the Motion for Preliminary Injunction out-of-time, but also Defendant Willow Brook attempted to disguise its late response as something other than a response.

6. District courts have the inherent power to enforce their own orders. *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980). If Defendant Willow Brook had wanted to file an individual response, it should have done so on February 12, 2008. It did not. The State should not be prejudiced by having to spend valuable time and resources replying to an untimely response brief in the midst of the preliminary injunction hearing -- time that can be better spent putting on its case and preparing for cross-examination of the witnesses to be called in Defendants' case.

7. In any event, the simple fact of the matter is that Defendant Willow Brook's birds are presently generating poultry waste in the Illinois River Watershed, and will continue to do so until this coming summer. Moreover, Defendant Willow Brook makes the bald assertion -- but provides no evidence -- that the poultry waste its birds are presently generating will in fact be

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<sup>1</sup> Indeed, Defendant Willow Brook had, on February 15, 2008, already participated in filing a trial brief for the hearing on the Motion for Preliminary Injunction. *See* DKT #1560.

land applied outside of the Illinois River Watershed. Yet further, Defendant Willow Brook states in DKT #1581 that it does not intend to appear at the preliminary injunction hearing, and thus will not be putting on evidence to support its unsubstantiated assertion. Because the disposal of poultry waste in the Illinois River Watershed is presenting an imminent and substantial endangerment to human health, Defendant Willow Brook should be enjoined so as to guarantee that the poultry waste Willow Brook's birds are presently generating will in fact not be land applied in the Illinois River Watershed.

WHEREFORE, in light of the foregoing, the State's motion to strike "Willow Brook Foods, Inc.'s Trial Brief for Hearing on Preliminary Injunction" [DKT #1579] should be granted.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

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